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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Revised estimates relating to the budget of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, for the biennium 2008-2009

Report of the Secretary-General

Summary

The present report reflects additional requirements in the amount of $27.0 million, net of staff assessment, over the initial appropriation for the International Criminal Tribunal for Rwanda for the biennium 2008-2009 as approved by the General Assembly in its resolution 62/229. The increased requirements relate primarily to the revision of the trial schedule for 2009 as a result of the recent apprehension of some high-level accused as well as the continuation into 2009 of some of the trials that were originally planned for completion by the end of 2008. The Assembly is requested to approve an additional appropriation for the biennium 2008-2009 in the amount of $28,851,100 gross ($26,959,100 net) to the Special Account for the International Criminal Tribunal for Rwanda.

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I. Introduction

1. The General Assembly, in its resolution 62/229, decided to appropriate to the Special Account for the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 a total amount of $267,356,200 gross ($247,466,600 net) for the biennium 2008-2009.

2. In paragraphs 8 and 48 of his report to the General Assembly on the budget for the Tribunal for the biennium 2008-2009 (A/62/468), the Secretary-General indicated that the tracking and apprehension of the remaining six high-level fugitives (Felicien Kabuga, Protais Mpiranya, Augustin Ngirabatware, Callixte Nzabonimana, Augustin Bizimana and Idelphonse Nizeyimana) had been intensified. These fugitives, who have been prioritized for trial at the Tribunal, include some of the most notorious alleged perpetrators of the genocide, such as Felicien Kabuga. The Security Council has stressed the importance of the arrest and transfer of Kabuga to the Tribunal as soon as possible in order to determine his guilt or innocence. It was also indicated that the trial schedule and the budget proposal for the biennium 2008-2009 did not take into account the resource requirements related to the trials of the six fugitives, and accordingly, estimates in respect of these six fugitives would be addressed in the context of revised estimates as and when the fugitives are apprehended.

3. Since the approval of the budget for the Tribunal for the biennium 2008-2009, there have been two developments that had an impact on the trial schedule which has necessitated the current request for additional resources. First, three fugitives (Ngirabatware, Nzabonimana and Dominique Ntawukuriryayo), who had been at large at the time of budget preparation, were recently apprehended. Secondly, because of reasons beyond the Tribunal's control, the trial schedule for 2009 has been revised to reflect changes in the completion of some first instance trials as compared to the schedule available at the time of preparation of the budget for the biennium 2008-2009.

II. Revised programme of work for 2009

4. By 22 February 2008, the Tribunal had apprehended Ngirabatware, Nzabonimana and Ntawukuriryayo. In accordance with the completion strategy of the Tribunal, the first two are among the six fugitives prioritized for trial at the Tribunal. The trials of Ngirabatware and Nzabonimana had been planned to start before or by the end of 2008. However, owing to the non-availability of judges and courtroom space, commencement of these two trials is now scheduled for early 2009.

5. The case of Ntawukuriryayo was initially earmarked for referral to a national jurisdiction for trial. To date, the Prosecutor has not found a jurisdiction willing and able to accept the referral of this case. He has further reviewed the case since the arrest of the fugitive. Based on the latest review and as no country is willing to take the transfer of the case, the Prosecutor has concluded that the case should be tried

before the International Criminal Tribunal for Rwanda, which is now scheduled to commence in early 2009.

6. Furthermore, trial work has fallen behind the schedule originally contemplated for the biennium 2008-2009 and some of the trials that were to be completed in 2008 are now expected to continue into 2009. It is anticipated that the hearing of evidence in one ongoing multi-accused case involving three accused persons (the *Karemera* case) and five single-accused cases (*Kalimanzira*, *Setako*, *Bagaragaza*, *Nshogoza* and *Muvunyi* retrial) will extend into 2009.

7. Although the hearing of evidence in three other multi-accused cases involving 14 accused (*Butare*, *Military II* and *Government II*) and one single-accused case (*Nsengimana*) are expected to be completed in 2008, judgement writing in these cases will continue into 2009.

8. On 29 August 2008, the Appeals Chamber of the International Criminal Tribunal for Rwanda reversed the conviction and sentence in the *Tharcisse Muvunyi* case and ordered the retrial of *Muvunyi* on one count, thus adding to the judicial workload for 2009.

9. The Tribunal anticipates that it will be writing judgements and conducting trials in 17 cases involving 30 accused persons during 2009. Details are as follows:

(a) Cases in judgement drafting only: four cases involving 15 accused [*Butare* (6 accused); *Military II* (4 accused); *Government II* (4 accused); and *Nsengimana*];

(b) Cases where trial will be ongoing and judgement completed: six cases involving eight accused [*Karemera* (3 accused); Callixte Kalimanzira; Ephrem Setako; Michel Bagaragaza; Tharcisse Muvunyi; and Leonidas Nshogoza];

(c) Cases where evidence will commence and judgement will be completed: three cases involving three accused (Augustin Ngirabatware, Callixte Nzabonimana and Dominique Ntawukuriryayo);

(d) Four cases earmarked for referral to Rwanda, in the event they will be tried at the Tribunal should the Appeals Chamber uphold the decisions rendered by the Trial Chambers rejecting the Prosecutor's applications in respect of three cases involving Yussuf Munyakazi, Gaspard Kanyarukiga and Idelphonse Hategekimana. The first instance decision in the fourth case, Jean Baptiste Gatete, remains pending before the Trial Chamber that rejected the Hategekimana application.

III. Status report on trials and referrals as of 31 August 2008

10. The estimates of the time frame for the completion of the ongoing trials have been revised in light of progress made since the submission of the initial budget proposals for the biennium 2008-2009.

11. Six cases involving nine accused persons are at the judgement-writing stage. They include the multi-accused *Military II* case involving four accused persons and the single-accused cases of *Renzaho*, *Rukundo*, *Nchamihigo*, *Bikindi* and *Zigiranyirazo*.

12. The Tribunal had originally contemplated that 23 accused persons would be undergoing trial during 2008. However, as at the end of August 2008, the trials of 19

accused persons were in progress. Ongoing trials as at the end of August 2008 include *Butare*, involving six accused persons; *Government II*, involving four accused persons; *Military II*, involving four accused persons; and *Karemera*, involving three accused persons. In addition, two single-accused trials of *Kalimanzira* and *Setako* were also in progress as at end of August 2008. Both are expected to continue into 2009. The single-accused trial of *Nshogoza* for contempt of court is scheduled to commence in September and expected to continue into 2009.

13. The hearing of evidence in the *Government II* trial has been completed but the Trial Chamber is still to receive closing briefs and oral arguments. Trial Chambers estimate that they will complete the hearing of all the evidence in the *Butare* trial (6 accused persons) by the end of 2008. However, it is expected that closing briefs will be filed and oral argument delivered in the first quarter of 2009. It is estimated that the hearing of all the evidence in the *Military II* trial (4 accused persons) will be completed in the last quarter of 2008. The hearing of all evidence in the *Karemera* trial (3 accused persons) is expected to be completed by mid-2009.

14. The trial of *Kalimanzira* had been expected to commence in the last quarter of 2007. However, the starting date had to be shifted to January 2008, and further postponed to end of April 2008, because of the unavailability of courtroom space and judges. Its completion is now expected in the first half of 2009. The trial of *Setako* had also been expected to commence in the last quarter of 2007. However, owing to the unavailability of judges and courtrooms, and the concomitant congestion in the trial schedules of the Trial Chambers, it was only possible to start the trial on 25 August 2008. Although single-accused trials do not normally involve any length of time to complete, it is now most probable that these two trials will carry into the first half of 2009.

15. The trial of *Nzabonimana* is expected to start in January 2009 and be completed in June 2009. The trials of *Ngirabatware* and *Ntawukuriryayo* are expected to start in May 2009 and to be completed in October 2009. The exact dates for their commencement will depend upon the availability of both courtroom space and presiding judges.

16. Since June 2007, the Prosecutor has filed applications for orders in terms of rule 11 bis of the Rules of Evidence and Procedure, for the referral of the cases of four detainees (Munyakazi, Kanyarukiga, Gatete and Hategekimana) and one fugitive (Fulgence Kayishema) to Rwanda for trial. Trial Chambers have rejected the applications for referral in the cases of Munyakazi, Kanyarukiga and Hategekimana. Decisions are pending in respect of the cases of Kayishema and Gatete. It is anticipated that these applications will also be rejected as they are based on the same premise as those that have already been rejected. The rejection of the applications for referral have meant that the previously expected reduction in the overall workload of the Tribunal for the biennium 2008-2009 would no longer materialize. The cases of the four detainees have therefore been added to the trials workload to prosecute Munyakazi, Kanyarukiga, Hategekimana, and Gatete before the Trial Chambers of the Tribunal during 2009.

17. The previously successful referral of the case of Michel Bagaragaza to the Netherlands has had to be revoked when the Dutch courts indicated that they do not have jurisdiction to try the case. The negotiation of a guilty plea agreement did not materialize in July 2008. In view of the difficulty that the Tribunal has encountered

in finding Member States who are willing and able to accept the referral and to try the accused, the Prosecutor has decided that Bagaragaza will be tried at the Tribunal in Arusha, United Republic of Tanzania, in 2009.

18. The rejection of the applications under rule 11 bis for the referral of cases to Rwanda for trial also has implications for the 13 indicted fugitives. The initial strategic plan of the Prosecutor was to refer most of the cases of these fugitives (except the cases of Kabuga, Mpiranya, Bizimana, Nizeyimana, Ngirabatware and Nzabonimana) to national jurisdictions for trial. The fugitive-tracking strategy had been adjusted accordingly to concentrate only on the six top priority fugitives who were earmarked for trial before the Trial Chambers of the Tribunal. Two (Ngirabatware and Nzabonimana) have since been arrested but the other four are still at large. Although the Prosecutor has not succeeded in securing other national jurisdictions to accept the referral of cases, Rwanda has agreed to accept the referral of all cases to its jurisdiction, including the cases of fugitives. However, the reluctance of the Trial Chambers to refer cases to Rwanda has meant that the Prosecutor must now expand the tracking activities to track all the 13 fugitives with the view to prosecuting them before the Trial Chambers of the Tribunal.

IV. Additional resource requirements for the biennium 2008-2009

Table 1
Additional requirements by component
(Thousands of United States dollars)

Component	*2008-2009 initial appropriation*	*Change*	*2008-2009 estimate*
Expenditure			
A. The Chambers	8 996.9	1 073.6	10 070.5
B. Office of the Prosecutor	58 965.5	8 395.2	67 360.7
C. The Registry	190 760.9	19 382.3	210 143.2
D. Records management and archives	8 632.9	—	8 632.9
Total (gross)	**267 356.2**	**28 851.1**	**296 207.3**
Income			
Income from staff assessment	19 889.6	1 892.0	21 781.6
Total (net)	**247 466.6**	**26 959.1**	**274 425.7**

Table 2
Additional requirements by object of expenditure
(Thousands of United States dollars)

Component	*2008-2009 initial appropriation*	*Change*	*2008-2009 estimate*
Posts	170 097.2	—	170 097.2
Other staff costs	16 556.4	16 389.7	32 946.1
Non-staff compensation	8 362.5	1 073.6	9 436.1
Consultants and experts	1 034.0	50.0	1 084.0
Travel of representatives	634.4	—	634.4
Travel	4 977.6	1 320.9	6 298.5
Contractual services	23 714.2	7 234.4	30 948.6
General operating expenses	13 485.6	599.5	14 085.1
Hospitality	7.1	—	7.1
Supplies and materials	3 172.9	291.0	3 463.9
Furniture and equipment	2 347.7	—	2 347.7
Improvement of premises	289.8	—	289.8
Grants and contributions	2 787.2	—	2 787.2
Staff assessment	19 889.6	1 892.0	21 781.6
Total (gross)	**267 356.2**	**28 851.1**	**296 207.3**
Income			
Income from staff assessment	19 889.6	1 892.0	21 781.6
Total (net)	**247 466.6**	**26 959.1**	**274 425.7**

19. The additional resource requirements reflect the requirements in order to start and complete the trials of 10 new cases involving three recently arrested accused persons (Nzabonimana, Ntawukuriryayo and Ngirabatware); Bagaragaza; four referral cases to Rwanda rejected by the Trial Chambers (Munyakazi, Kanyarukiga, Hategekimana and Gatete), retrial of *Muvunyi*, and the case of Leonidas Nshogoza for contempt of court; and to complete the ongoing complex multi-accused and two single cases which would carry over into 2009.

20. Based on the projected reduced trial activity assumed at the time of finalization of the budget proposals in 2007, the initial appropriation of the Tribunal for the biennium 2008-2009 provided for the gradual phasing out of functions of 339 posts in 2009, as follows: (a) abolition of 193 posts effective 1 January 2009 (7 P-5, 7 P-4, 31 P-3, 35 P-2, 33 General Service (Other level), 19 Security Service and 61 Local level); and (b) abolition of 146 posts effective 1 July 2009 (2 P-4, 14 P-3, 28 P-2, 1 General Service (Principal level), 19 General Service (Other level), 18 Security Service, 60 General Service (Local level) and 4 Field Service). However, it is recalled that as indicated in paragraph 16 of the report on the budget for the Tribunal for the biennium 2008-2009 (A/62/468), the abolition of the 146 posts would also be effected as of 1 January 2009 and the related funding for these posts will be provided through general temporary assistance for the continuation of the functions through 30 June 2009 in order to ensure that the

Tribunal would have the flexibility to accelerate or decelerate the phasing out of individual posts and enable the Tribunal the opportunity to more closely align staff requirements to servicing the trials during the critical period of the completion phase. However, as explained in the preceding paragraphs, the latest trial schedule foresees that the level and pace of trial activity up to the third quarter of 2009 would be at 2008 levels. On this basis, the Tribunal would require the continuation of the functions up to 30 September 2009 of the 339 posts earmarked for abolition during 2009 in order to ensure the steady progress and completion of trial activities and enable the Trial Chambers to optimally utilize courtroom and judicial capacity. The funding for the continuation of the aforementioned functions would be provided through general temporary assistance.

A. Chambers

21. On 6 June 2008, the President of the International Criminal Tribunal for Rwanda requested the Secretary-General to transmit his letter to the Presidents of the Security Council and the General Assembly for their consideration and necessary action regarding his request to extend the terms of some of the judges to allow the completion of trial work at the earliest date possible as a result of new developments that would have an impact on the trial schedule which would necessitate additional resources (see A/62/896-S/2008/436). The Security Council, in its resolution 1824 (2008), extended the terms of office of the judges concerned in order to enhance the effectiveness of trial proceedings and contribute towards ensuring the implementation of the Completion Strategy. By its decision 62/421 of 28 July 2008, the General Assembly also endorsed the recommendation of the Secretary-General to authorize the extension of the terms of office of the permanent and ad litem judges of the Tribunal.

22. The revised judicial workload would contemplate a revision and change in the tenure of judges according to the following projections:

(a) During 2008, two judges (1 permanent and 1 ad litem) would leave the Tribunal;

(b) By end of 2008, one permanent judge will leave the Tribunal;

(c) By 30 September 2009, 12 judges (6 permanent and 6 ad litem) would leave the Tribunal;

(d) 5 judges (3 permanent and 2 ad litem) will stay on board until 31 December 2009.

Table 3
Requirements by object of expenditure
(Thousands of United States dollars)

Assessed budget

Component	*2008-2009 initial appropriation*	*Resource growth*	*2008-2009 estimate*
Non-staff compensation	8 362.5	1 073.6	9 436.1
Travel of representatives	634.4	—	634.4
Total (gross)	**8 996.9**	**1 073.6**	**10 070.5**

Resource requirements

Salaries and allowances of judges

23. The estimated additional requirements of $1,073,600 under this heading would provide for honorariums of four permanent judges and four ad litem judges attributable to the extension of the tenure of assignment beyond the period previously contemplated related to the new trials.

B. Office of the Prosecutor

Table 4
Requirements by object of expenditure
(Thousands of United States dollars)

Assessed budget

Component	*2008-2009 initial appropriation*	*Resource growth*	*2008-2009 estimate*
Posts	49 775.2	—	49 775.2
Other staff costs	—	6 515.2	6 515.2
Consultants and experts	466.2	50.0	516.2
Travel	2 291.8	885.9	3 177.7
General operating expenses	541.1	184.1	725.2
Staff Assessment	5 891.2	760.0	6 651.2
Total (gross)	**58 965.5**	**8 395.2**	**67 360.7**
Income			
Income from staff assessment	5 891.2	760.0	6 651.2
Total (net)	**53 074.3**	**7 635.2**	**60 709.5**

Resource requirements

Other staff costs

24. The approved budget of the Tribunal for the biennium 2008-2009 provided for the phasing out of functions of 67 posts in the Office of the Prosecutor as of 1 January 2009. However, the revised trial schedule for 2009 necessitates that the functions need to continue through 30 September 2009. Accordingly, the requirements of $6,515,200 would cover the corresponding salaries and common staff costs associated with the continuation for up to nine months of the functions of the 67 posts (5 P-5, 5 P-4, 23 P-3, 23 P-2, 6 GS (Other level) and 5 Local level) and it is proposed that the funding for these functions would be provided through general temporary assistance. This arrangement would ensure the Office of the Prosecutor the flexibility to accelerate or decelerate the phasing out of individual positions.

Consultants and experts

25. The additional amount of $50,000 would be required for the engagement of additional consultants and expert witnesses to assist trial teams in the pretrial and trial stages of proceedings. Consultants would be required to analyse materials or undertake specific studies on trial-related issues, assist the investigators and trial attorneys in the pretrial stage of proceedings and would be required to travel to either Kigali or Arusha to present their reports and brief prosecution attorneys on the development of their findings. Expert witnesses are recognized experts in their field and advise the prosecution both prior to trial and during the trial phase on issues related to their specialization. Prosecutors need to discuss testimony, potential testimony or defence testimony with an expert in the field, who may or may not testify for the Prosecution. Experts may also be called during the trial-preparation phase to give assessment of particular evidence such as forensic evidence.

Travel

26. The additional provision of $885,900 would cover mission travel to be undertaken by staff of the Prosecution Division and the Investigation Section for purposes of checking the antecedents of each defence witness, cross-examination and for proofing prosecution witnesses. Investigators would be required to undertake missions for locating and interviewing witnesses, proofing witnesses, rebuttal of defence witness testimony and serving summons on witnesses. The prosecution staff would have to undertake missions to Rwanda and other countries to enable them to respond to rule 115 appellate motions, conduct alibi investigations, criminal background proofings of witnesses, and proofings of Rwandan judicial records. The trials teams would also be required to prepare for the rebuttal of defence witnesses. In addition, the trial teams would visit Kigali in order to consult on the form of indictments and other documents, familiarize themselves with crime scenes, consult with investigators, ensure the collection and transfer of all evidence, and confirm and proof witnesses for trial.

General operating expenses

27. The additional amount of $184,100 would cover the operation expenses of the Intelligence Tracking Unit to cover the cost for providing security protection to prosecution witnesses, insider cases and sources informants.

Staff assessment

28. Staff assessment costs are estimated at $760,000 relating to the general temporary assistance positions reflected in paragraph 24 above. These costs will be offset by a corresponding amount under income from staff assessment.

C. Registry

Table 5
Requirements by object of expenditure
(Thousands of United States dollars)

Assessed budget

Component	*2008-2009 initial appropriation*	*Resource growth*	*2008-2009 estimate*
Posts	120 322.0	—	120 322.0
Other staff costs	11 499.7	9 874.5	21 374.2
Consultants and experts	504.6	—	504.6
Travel	2 589.9	435.0	3 024.9
Contractual services	21 450.1	7 234.4	28 684.5
General operating expenses	12 944.5	415.4	13 359.9
Hospitality	7.1	—	7.1
Supplies and materials	2 681.7	291.0	2 972.7
Furniture and equipment	1 685.9	—	1 685.9
Improvement of premises	289.8	—	289.8
Grants and contributions	2 787.2	—	2 787.2
Staff Assessment	13 998.4	1 132.0	15 130.4
Total	**190 760.9**	**19 382.3**	**210 143.2**
Income			
Income from staff assessment	13 998.4	1 132.0	15 130.4
Total requirements (net)	**176 762.5**	**18 250.3**	**195 012.8**

Resource requirements

Other staff costs

29. The additional amount of $9,874,500 is required to cover the following:

(a) General temporary assistance ($9,574,500). The requirements would provide for the following:

(i) Continuation for up to nine months of the functions related to the 126 posts (2 P-5, 2 P-4, 8 P-3, 12 P-2, 27 General Service (Other level), 19 Security Service and 56 Local level) scheduled for abolition effective 1 January 2009;

(ii) Continuation for an additional three months the functions of the 146 positions (2 P-4, 14 P-3, 28 P-2, 1 General Service (Principal level), 19 General Service (Other level), 4 Field Service, 18 Security Service and 60 Local level). These positions are currently funded through 30 June 2009.

The funding through general temporary assistance for the above-mentioned functions through 30 September 2009 are commensurate with the revised level of judicial activities during 2009;

(b) Overtime ($300,000). In the light of the revised judicial calendar, requirements under this budget line would provide for the additional court sessions and movement of witnesses.

Travel

30. The additional amount of $435,000 is attributable to the travel and allowances for both prosecution and defence witnesses, and the travel of staff in support of witnesses and other necessary activities resulting from increased trial activities. It is anticipated that an additional 540 witnesses might be called for testimony during 2009. The cost of travel includes costs for travel documents, local travel, accommodation costs and daily subsistence allowance.

Contractual services

31. An additional provision of $7,234,400 relates primarily to Defence Counsel fees relating to increased trial activity and are based on the lump-sum system. The estimates include fees and other related and necessary expenses of the team of defence counsel assigned by the Registrar to any accused person unable to provide his/her own legal representation, in line with the requirements of indigence as defined in article 4 of the directive. Each team is composed of a lead counsel, co-counsel, two investigators and an assistant.

General operating expenses

32. The additional requirements of $415,400 under rental of fixed-wing aircraft would provide for increased operation of the United Nations Beechcraft in the light of the increased movement of witnesses to be handled during 2009, particularly between Kigali and Arusha, as a consequence of the revised trial schedule. The provision includes a base cost, crew maintenance, landing and parking fees, ground-handling services, additional risk insurance and storage.

Supplies and materials

33. The additional resources of $291,000 would provide for petroleum, oil and lubricants ($241,000) owing to increased movement of witnesses, detainees and staff anticipated during 2009 in line with increased judicial activities, as well as audio-visual supplies ($50,000).

Staff assessment

34. Staff assessment costs are estimated at $1,132,000 relating to the general temporary assistance positions reflected in paragraph 29 above. These costs will be offset by a corresponding amount under income from staff assessment.

V. Actions to be taken by the General Assembly

35. **The General Assembly is requested to:**

(a) **Take note of the present report;**

(b) **Approve an additional appropriation in the amount of $28,851,100 gross ($26,959,100 net) for the biennium 2008-2009 to the Special Account for the International Criminal Tribunal for Rwanda.**